

1 Shellie McGaughey, WSBA #16809  
 2 Michael Kyllo, WSBA #51412  
 2 McGaughey Bridges Dunlap, PLLC  
 3 3131 Western Avenue, Suite 410  
 3 Seattle, Washington 98121  
 4 Ph: 425-462-4000  
 4 [Shellie@mcbdlaw.com](mailto:Shellie@mcbdlaw.com)  
 5 [Mike@mcbdlaw.com](mailto:Mike@mcbdlaw.com)

6 HONORABLE TIFFANY M. CARTWRIGHT

7 UNITED STATES DISTRICT COURT  
 8 FOR THE WESTERN DISTRICT OF WASHINGTON

9 JULIE JAMAN,

10 Plaintiff,

11 v.

12 CITY OF PORT TOWNSEND,  
 13 WASHINGTON; JOHN MAURO, in his  
 14 official and personal capacities; THE  
 15 OLYMPIC PENINSULA YMCA; WENDY  
 16 BART. In her official and personal capacities;  
 17 ROWEN DELUNA, in her official and  
 18 personal capacities; ERIN HAWKINS, in her  
 19 official and personal capacities; and JOHN  
 20 DOES 1–10, in their official and personal  
 21 capacities,

22 Defendant.

23 NO: 3:24-CV-05466-TMC

24 DEFENDANTS OLYMPIC PENINSULA  
 25 YMCA, WENDY BART, ROWEN  
 26 DELUNA, AND ERIN HAWKINS' FED. R.  
 27 CIV. P. (12)(b)(6) MOTION TO DISMISS

28 NOTED: DECEMBER 10, 2024

29 **I. RELIEF REQUESTED**

30 COMES NOW defendants Olympic Peninsula YMCA, Wendy Bart, Rowen DeLuna, and  
 31 Erin Hawkins (hereinafter collectively referred to as "YMCA") and moves to dismiss Plaintiff's  
 32 claims on grounds that Defendants were not state actors as required under 42 U.S.C. § 1983.

33 YMCA's answer states Ms. Jaman failed to state a claim upon which relief could be  
 34 granted. YMCA respectfully requests this motion to dismiss be granted as a Motion for  
 35 Judgment on the Pleadings pursuant to Fed. R. Civ. P. 12(c) or per 12(b)(6). Defendants do not  
 36

**DEFENDANTS OLYMPIC PENINSULA YMCA,  
 WENDY BART, ROWEN DELUNA, AND ERIN  
 HAWKINS'S MOTION TO DISMISS -1-**

**3:24-CV-05466-TMC**

MC GAUGHEY BRIDGES DUNLAP, PLLC  
 3131 WESTERN AVE, SUITE 410  
 SEATTLE, WA 98121  
 (425) 462 - 4000  
 FACSIMILE (425) 637 - 9638

1 rely on any documents outside of the pleadings.

## 2 II. OVERVIEW

3 Plaintiff Julie Jaman has brought six causes of action, three of which are against the  
4 moving Defendants who seek dismissal.<sup>1</sup>

5 Ms. Jaman's lawsuit arises after Olympic Peninsula YMCA ("YMCA") removed and  
6 permanently banned her for violating its Code of Conduct after she verbally abused a transgender  
7 YMCA staff member using vulgar language in front of several young children. Ms. Jaman  
8 claims the YMCA violated her constitutionally protected rights under the First and Fourteenth  
9 Amendments to Free Speech, Due Process, and Equal Protection.

10 Ms. Jaman brings these Constitutional challenges as a civil action pursuant to 42 U.S.C. §  
11 1983. To state a claim under § 1983, a plaintiff must both (1) allege the deprivation of a right  
12 secured by the Federal Constitution or statutory law, and (2) allege that the deprivation was  
13 committed by a person acting under color of state law. *Anderson v. Warner*, 451 F.3d 1063,  
14 1067 (9th Cir. 2006); *citing West v. Atkins*, 487 U.S. 42, 48, (1988).

15 This motion to dismiss is solely on the issue of the second element: deprivation was  
16 committed by a person acting under color of state law. *Id.*

17 For the YMCA to be liable under 42 U.S.C. § 1983, it must have been acting under  
18 "color of state law" at the time of the alleged Constitutional Violation: her removal and  
19 permanent ban from the YMCA on July 26, 2022. Most of Ms. Jaman's factual allegations are  
20 of post-ban conduct. Ms. Jaman makes no factually possible allegations of conduct before July  
21 26, 2022.

22 Ms. Jaman attached 29 exhibits (816 pages) to her Complaint. Ms. Jaman has voluntarily  
23 incorporated those exhibits into the pleadings. "If a complaint is accompanied by attached

---

24 <sup>1</sup> The other three causes of action allege intentional torts solely against the City of Port Townsend. Dkt. 1, Complaint,  
25 paras. 123-139. This motion will not address those causes of action.

1 documents, the court is not limited by the allegations contained in the complaint.” *Durning v.*  
 2 *First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987); citing *Amfac Mortgage Corp. v.*  
 3 *Arizona Mall of Tempe, Inc.*, 583 F.2d 426, 429–30 (9th Cir. 1978). “These documents are part  
 4 of the complaint and may be considered in determining whether the plaintiff can prove any set of  
 5 facts in support of the claim.” *Id.*

6 Defendants Wendy Bart, Rowen DeLuna, and Erin Hawkins were all employees of  
 7 Olympic Peninsula YMCA and were acting within the scope of their employment at all times  
 8 alleged in the Complaint. The authority for determining whether a person or entity was acting  
 9 under the color of state law is the same for all four moving Defendants.

### 10 III. PERTINENT FACTS<sup>2</sup>

11 Olympic Peninsula is a local affiliate of the YMCA (Young Men’s Christian  
 12 Association). Dkt. 1, Complaint, para. 2. The YMCA is a private non-profit corporation. *Id.*  
 13 The YMCA operates a pool. *Id.* Beginning in October 2021, the YMCA took operational  
 14 control over an existing pool structure located at 1919 Blaine St, Port Townsend, WA. Ex. 3  
 15 attached to Complaint, Dkt. 1-2, Management Agreement, p. 623.<sup>3</sup>

16 On July 26, 2022, Ms. Jaman went for a swim at the subject pool. Dkt. 1, Complaint,  
 17 para. 40. Ms. Jaman claims after her swim she saw YMCA employee Clementine Adams and  
 18 another YMCA employee accompanying day-camp children in the restroom. *Id.* at para. 45; also  
 19 Ex. 20, Dkt. 1-3, Mtn View Pool Incident, p. 54. Ms. Jaman confronted Clementine Adams and  
 20 asked, “do you have a penis?” before ordering her to “Get out of here!” Dkt. 1, Complaint, para.  
 21 46. “Within seconds” Rowen DeLuna learned of what happened and banned Ms. Jaman from the  
 22

---

23 <sup>2</sup> All facts herein are derived from plaintiff’s pleadings.

24 <sup>3</sup> YMCA is only using Ms. Jaman’s complaint and her attached exhibits. When YMCA references an exhibit  
 25 number, it corresponds to the exhibit number Ms. Jaman filed. Additionally, instead of citing the exhibit page  
 number, YMCA cites the Docket number.

1 pool ‘for life’ and told her to leave. *Id.* at para. 47. This interaction is the basis for Ms. Jaman’s  
 2 Constitutional Violations. *Id.* at paras. 91, 110, 118.

3 Plaintiff alleges the YMCA’s actions on July 26, 2022, were under the color of state law.  
 4 *Id.* at paras. 23, 19, 20, 21. Various documents Ms. Jaman attaches to her Complaint evidence  
 5 that this bare assertion is impossible.

6 **First**, the YMCA entered into a Management Agreement with the City of Port Townsend  
 7 (Hereinafter “City”); Ms. Jaman attached this agreement to the Complaint as Exhibit 3. Dkt. 1,  
 8 Complaint, para. 27; see Ex. 3, Management Agreement, Dkt. 1-2, p. 623.

9 The Management Agreement states the YMCA has full “discretion and control in all  
 10 matters relating to the management and operation of the Pool, including, without limitation,  
 11 staffing decisions, employment policies, [etc.].” *Id.* No government entity has authority or  
 12 influence over YMCA’s management and operation decisions. See *Id.*

13 Additionally, the Management Agreement gives the YMCA the sole discretion to exclude  
 14 any person from the pool. Ex. 3, Dkt. 1-2, Management Agreement, p. 625. Cited below is from  
 15 Section 3.e titled “License and Access” of the Management Agreement:

16 [The YMCA license] includes the right to set its own rules and  
 17 policies regarding access to the Pool and its facilities, and to  
 18 exclude any person from using the Pool, its facilities and  
 equipment, subject to any code, statute, or law prohibiting such  
 exclusion.

19 *Id.* In other words, if a code, statute, or law does not prohibit YMCA’s ability to exclude “any  
 20 person from using the pool, its facilities and equipment” the YMCA (as a private entity) has full  
 21 license to do so. *Id.* The City did not restrict YMCA’s rights as a private entity or grant  
 22 additional authority that a private entity otherwise would not have. See *Id.*

23 **Second**, Ms. Jaman attaches the Mt. View Pool Code of Conduct as Exhibit 9. The  
 24 YMCA implemented its standard YMCA Code of Conduct and required all patrons to abide by it.  
 25

1 See Ex. 9, Dkt. 1-3, Mt. View Pool Code of Conduct, p. 23-24. No one was allowed entry  
 2 without first presenting ID and being added to the database. *Id.* Stated in the Mt. View Pool  
 3 Code of Conduct are some of the rules patrons agree to:

4 **When you access YMCA facilities and/or programs, you agree  
 5 to:**

6 1. Uphold the YMCA core values of caring, respect, honesty, and  
 7 responsibility.  
 8 2. Provide an atmosphere free of discrimination, hatred, derogatory  
 9 or unwelcome comments, intimidation, conduct or actions of  
 10 sexual nature, or actions based on an individual's sex, race,  
 ethnicity, age, religion, disability, sexual orientation, or any other  
 legally protected status.  
 11 3. Be respectful of and cooperative with YMCA staff, lifeguards,  
 12 and others.  
 13 4. Adhere to all YMCA guidelines and codes of conduct.

14 **YMCA staff reserve the right to refuse service and  
 15 membership to anyone who violates any of these guidelines.**

16 *Id.*; see also Dkt. 1, Complaint, para. 37. Also listed in the Mt. View Pool Code of Conduct,  
 17 YMCA states the following will not be tolerated at its facilities and/or programs:

18 1. Disrespectful words or gestures towards YMCA staff or others.  
 19 2. Abusive, harassing and/or obscene language or gestures towards  
 20 YMCA staff or others.  
 21 3. Threats of harm, physical aggression or violent acts towards  
 22 YMCA staff or others.  
 23 [...]  
 24 8. Offensive and unlawful conduct towards YMCA staff or others.  
 25

1 YMCA staff reserve the right to refuse service and  
 2 membership to anyone who is not courteous and kind.

3 *Id.*<sup>4</sup> YMCA's right to refuse service is granted through its status as a private entity and not by a  
 4 city granted power. See Dkt. 1-2, Management Agreement, p. 623-633.

5 The facts above were not hidden from Plaintiff. Rather, Plaintiff quoted much of the  
 6 above in her Complaint.

7 Plaintiff further admits YMCA had "day-to-day operations of the pool," that YMCA is a  
 8 "private entity," and YMCA had "the right to set its own rules and policies regarding access to  
 9 the pool and its facilities, and to exclude any person from using the pool." Dkt. 1, Complaint,  
 10 para. 28, 29. Despite those admissions, Plaintiff still alleges "The YMCA's operation of the pool  
 11 is state action." *Id.* That bare assertion is not factually possible.

12 The City has no involvement in the YMCA's operation of the pool. Ms. Jaman states as  
 13 much in her Complaint. Dkt. 1, Complaint, para. 33 ("Under the management agreement the  
 14 Pool is managed and operated exclusively by the YMCA.").

15 Instead of genuine factual allegations, Plaintiff includes all the buzzwords for state action  
 16 and states the elements of her claim as if those satisfy as factual contentions. They do not. When  
 17 describing the parties in her Complaint, this is how Ms. Jaman describes the YMCA:

18 Although the YMCA is a private entity, it was engaged in state  
 19 action for all relevant purposes: It was managing government  
 20 property (the Pool) in a symbiotic relationship with the City and in  
 21 furtherance of a public function, and City and YMCA officials  
 22 were engaged in a conspiracy, had a close nexus, and participated  
 23 in joint action regarding the response to the incident that occurred  
 24 on July 26, 2022, as alleged herein.

25 Dkt. 1, Complaint, para. 17. Words like "symbiotic relationship," "public function," "close

---

<sup>4</sup> Ms. Jaman claims her Due Process rights were violated because she was deprived a protected right without notice. The YMCA grants the above notice to all who use the pool. However, Defendants do not move on this issue.

1 nexus,” and “joint action” are all different portions of the test for whether a private entity’s action  
 2 is under color of state law. Those above quoted buzzwords appear nowhere else in Plaintiff’s  
 3 Complaint. See Dkt. 1, Complaint.

4 Ms. Jaman’s allegations of a conspiracy between Wendy Bart, CEO of Olympic Peninsula  
 5 YMCA and John Mauro, City Manager of the City of Port Townsend are only allegations of  
 6 conduct after July 26, 2022. A mere allegation “the City had the power to reverse YMCA’s  
 7 decision” but eventually “ratified the YMCA’s ban” does not create a claim against the YMCA.

8 This allegation is not factually possible based on Ms. Jaman’s 816 pages of exhibits, and  
 9 she cites none of them to support her claims against the YMCA. First, the Management  
 10 Agreement grants the YMCA full and exclusive control over who to exclude from the pool. Ex.  
 11 3, Dkt. 1-2, Management Agreement, p. 625; see also Ex. 9, Dkt. 1-3, Mt. View Pool Code of  
 12 Conduct, p. 24. Second, the Management Agreement does not grant the City power to reverse  
 13 YMCA’s decisions. *Id.* Third, in internal City emails, provided by Ms. Jaman, Mr. Mauro says  
 14 he believes the YMCA is “allowed to make [the decision] given our operations agreement.” Ex.  
 15 10, Dkt. 1-3, City Email, p. 28; Ex. 3, Dkt. 1-2, Management Agreement, p. 623-625. The City  
 16 never had the ability to overturn YMCA’s decision, and never ratified the YMCA’s ban, and Ms.  
 17 Jaman’s documents contradict her assertions. Regardless of the City’s actions or inactions, the  
 18 YMCA acted pursuant to its authority under the Management Agreement and its Code of  
 19 Conduct. *Id.*; see also Ex. 9, Dkt. 1-3, Mt. View Pool Code of Conduct, p. 24.

20 Ms. Jaman also alleges YMCA acted under the color of state law because it must meet  
 21 certain obligations to the City. Essentially, she alleges the YMCA must abide by restrictions or  
 22 standards uniquely imposed by a government entity because of its joint action. However, there is  
 23 only one quotation in the Complaint to the 816 pages of exhibits, which requires “compliance  
 24 with all applicable laws.” Dkt. 1, Complaint, para. 33. Requiring compliance with applicable  
 25 laws is not an additional obligation nor does it create a claim.

#### IV. AUTHORITY

#### A. Motion to Dismiss For Failure to State a Claim Standard

FRCP 12 states a court may grant a motion to dismiss for failure to state a claim upon which relief may be granted. Fed. R. Civ. P 12(b)(6). While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of her entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted).

“In practice, a complaint … must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory.” *Twombly* at 562. “The tenet that a court must accept a complaint’s allegations as true is inapplicable to threadbare recitals of a cause of action’s elements, supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009); citing *Twombly* at 555. Factual allegations must be enough to raise a right to relief above the speculative level. *Twombly* at 555. “Pleading must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action.” *Id.* Determining whether a complaint states a plausible claim is context specific, requiring the court to draw on its experience and common sense. *Iqbal* at 663-64.<sup>5</sup>

<sup>5</sup> Observing the possibility this motion is converted to a motion for judgment on the pleadings, “a motion for judgment on the pleadings is substantially identical to a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) because both permit challenges to the legal sufficiency of the opposing party’s pleadings. *Qwest Commc’ns Corp. v. City of Berkeley*, 208 F.R.D. 288, 291 (N. D Cal. 2002). Judgment on the pleadings is appropriate when, accepting as true all material allegations contained in the nonmoving party’s pleadings, the moving party is entitled to judgment as a matter of law. *Torbet v. United Airlines, Inc.*, 298 F.3d 1087, 1089 (9th Cir. 2002).” *Feliz on behalf of Est. of Clevenger v. Cnty. of Orange*, 2011 WL 13130897 (C.D. Cal. Dec. 7, 2011).

1                   **B.     Determining Whether a Private Entity Acts Under the Color of State Law.**

2                   As a preliminary matter, Ms. Jaman admits YMCA is a private entity. Dkt. 1, Complaint,  
 3                   paras. 2, 17, & 29. It is undisputed the YMCA is a private entity and not a state or local  
 4                   government.<sup>6</sup>

5                   As a matter of substantive Constitutional Law the state-action requirement reflects  
 6                   judicial recognition of the fact that ‘most rights secured by the Constitution are protected only  
 7                   against infringement by governments.’ *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 936  
 8                   (1982); *citing Flagg Brothers*, 436 U.S., at 156, 98 S.Ct., at 1733. The Supreme Court has long  
 9                   held that “merely private conduct, however discriminatory or wrongful,” falls outside the  
 10                   purview of the Fourteenth Amendment. *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020); *citing*  
 11                   *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982).

12                   **1. Distinction Between an Equal Protection Violation and a § 1983 Claim.**

13                   For Constitutional violations, one can bring either an Equal Protection Clause claim or a  
 14                   42 U.S.C. § 1983 action. The Fourteenth Amendment, Equal Protection Clause, requires “state  
 15                   action” and a § 1983 claim requires a private party to act “under color of state law.” The Equal  
 16                   Protection Clause can be used to invalidate laws, policy, or government action, while § 1983 is  
 17                   an avenue for civil action.

18                   Ms. Jaman mentions both the Equal Protection Clause and 42 U.S.C. § 1983 in her  
 19                   complaint. Each of Ms. Jaman’s three causes of action against the YMCA cites “42 U.S.C. §  
 20                   1983” as authority for this civil suit for damages. She does not allege a law, policy or  
 21                   government action it wishes to be overturned.

22                   The remainder of this motion will address whether YMCA acted “under the color of state  
 23

---

24                   <sup>6</sup> *See Id.*; *see also* Washington State Corporate Entity Business Information for the YMCA, [Corporations and](#)  
 25                   [Charities System](#), showing that the YMCA has been a licensed charitable, non-profit Washington organization since  
 1948. The Court is entitled to take judicial notice of this fact pursuant to FRE 201.

1 law" as required for a § 1983 claim.<sup>7</sup>

2 To state a claim under § 1983, a plaintiff must both (1) allege the deprivation of a right  
 3 secured by the Federal Constitution or statutory law, and (2) allege that the deprivation was  
 4 committed by a person acting under color of state law. *Anderson v. Warner*, 451 F.3d 1063, 1067  
 5 (9th Cir. 2006); *citing West v. Atkins*, 487 U.S. 42, 48, (1988).

6 Ultimately, the inquiry is always whether the "defendant has exercised power possessed  
 7 by virtue of state law and made possible only because the wrongdoer is clothed with the authority  
 8 of state law." *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 748 (9th Cir. 2020); *citing*  
 9 *West v. Atkins*, 487 U.S. 42, 49 (1988). The vital requirement is "State responsibility—that  
 10 somewhere, somehow, to some extent, there be an infusion of conduct by officials, panoplied  
 11 with State power, into any scheme" that deprives a person of their rights. *Terry v. Adams*, 345  
 12 U.S. 461, 473, 73 S. Ct. 809, 97 L. Ed. 1152 (1953).

13 To determine whether a private party's action amounts to state action, The Supreme Court  
 14 has articulated four tests: (1) the public function test; (2) the joint action test; (3) the state  
 15 compulsion test; and (4) the governmental nexus test." *Naoko Ohno v. Yuko Yasuma*, 723 F.3d  
 16 984 (9th Cir. 2013); *citing Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012). The  
 17 "public function" and "joint action" tests largely subsume the state compulsion and governmental  
 18 nexus tests. *Ohno* 723 F.3d 984, 996 n.13 (9th Cir. 2013)<sup>8</sup>.

19 **2. Public Function Test:**

20 The Public Function Test exists when "private individuals or groups are endowed by the  
 21 State with powers or functions *governmental in nature*, they become agencies or instrumentalities

---

22  
 23 <sup>7</sup> Because plaintiff can bring Equal Protection and 1983 claims together, generally authority uses the terms "state  
 actor" and "under color of state law" interchangeably.

24 <sup>8</sup> YMCA recognizes this cite is to a footnote. However, Ms. Jaman alleges a "symbiotic relationship with the city" and  
 25 "furtherance of a public function" which will later show are the primary elements for the "joint action" and "public function" test.  
 Additionally, the 9th Cir. has made this point in footnotes multiple times. *See also* Wright 48 F.4th 1112, n.6.

1 of the State and subject to its constitutional limitations.” *Kirtley v. Rainey*, 326 F.3d 1088, 1093  
 2 (9th Cir. 2003) (internal citation omitted)(emphasis added).

3 Citing *Kirtley*, “the public function test is satisfied only on a showing that the function at  
 4 issue is ‘both traditionally and exclusively governmental.’” *Florer v. Congregation Pidyon*  
 5 *Shevuyim, N.A.*, 639 F.3d 916, 924-25 (9th Cir. 2011). There are “very few” functions the court  
 6 has recognized as traditionally and exclusively a governmental task. *Wright v. Serv. Employees*  
 7 *Int'l Union Local 503*, 48 F.4th 1112, 1124 (9th Cir. 2022); citing *Flagg Brothers*, 436 U.S., at  
 8 156 (while many functions have been traditionally performed by governments, very few have  
 9 been ‘exclusively reserved to the State’).

10 Serving the public does not make an action a traditional and exclusive public function.  
 11 Tennessee Secondary School Athletic Association (TSSAA) regulated interscholastic sports for  
 12 Tennessee public and private high schools. *Brentwood Acad. v. Tennessee Secondary Sch.*  
 13 *Athletic Ass'n*, 531 U.S. 288, 121 S. Ct. 924, 148 L. Ed. 2d 807 (2001). The Supreme Court held  
 14 “The TSSAA no doubt serves the public, particularly the public schools, but the mere provision  
 15 of a service to the public does not render such provision a traditional and exclusive public  
 16 function. *Id.* at 309.

17 **3. Joint Action Test:**

18 A joint action between a state and a private party may be found in two scenarios: the  
 19 government either “(1) ‘affirms, authorizes, encourages, or facilitates unconstitutional conduct  
 20 through its involvement with a private party,’ or (2) ‘otherwise has so far insinuated itself into a  
 21 position of interdependence with the non-governmental party,’ that it is ‘recognized as a joint  
 22 participant in the challenged activity.’” *Wright* at 1123, citing *Belgau v. Inslee*, 975 F.3d 940 (9th  
 23 Cir. 2020), quoting *Ohno* at 996.

24 From *Belgau*, the state must “provide significant assistance to the *underlying* acts that the  
 25 [plaintiff] contends constituted the core violation of its First Amendment rights.” *Belgau* at 947-

1 48 (emphasis added). *Belgau* also states “a merely contractual relationship between the  
 2 government and the non-governmental party does not support joint action; there must be a  
 3 ‘symbiotic relationship’ of mutual benefit and ‘substantial degree of cooperative action.’ *Id.* at  
 4 948. No significant interdependence exists unless the government in a meaningful way accepts  
 5 benefits derived from the allegedly unconstitutional actions. *Id.*

## 6 V. ARGUMENT

7 It is important to identify Ms. Jaman’s allegations against the YMCA Defendants.  
 8 Plaintiff alleges the act of removing Ms. Jaman and banning her from the facility violates 42  
 9 U.S.C. § 1983. YMCA must have been acting under color of state law at the time of the alleged  
 10 Constitutional violation. Therefore, the actions under scrutiny are those that *preceded* Jaman’s  
 11 removal and permanent ban from the YMCA for violating its Code of Conduct.

12 For the reasons stated the YMCA does not satisfy the requirements under the Public  
 13 Function or Joint Actor tests to have acted under the color of state law.

14 Ms. Jaman provides no support for her 42 U.S.C. § 1983 claim. To the extent Ms. Jaman  
 15 has made factual allegations they either show a merely contractual relationship between YMCA  
 16 and the City, or they are rendered factually impossible by the documents in her pleadings.

### 17 1. **Defendants Did Not Act Under Color of State Law Under the Public Function** 18 **Test.**

19 The Public Function Test can be satisfied when “private individuals or groups are  
 20 endowed by the State with powers or functions *governmental in nature*, they become agencies or  
 21 instrumentalities of the State and subject to its constitutional limitations.” *Kirtley* at 1093.

22 Ms. Jaman must show the YMCA’s function is “both traditionally *and* exclusively  
 23 governmental.” *Florer*, 639 F.3d 916, 924-25 (emphasis added).

24 The YMCA operates a pool. The YMCA’s management of the pool is not a “public  
 25 function” because pool management is neither traditionally nor exclusively a government

1 function, let alone *both* a traditional and exclusive government function.

2 Governments do not routinely or traditionally manage pools, and the management of a  
 3 pool is not an exclusively governmental task. No authority supports this bare allegation that  
 4 operating a pool amounts to state action. Plaintiff's bare assertion that operating a pool is a  
 5 traditionally and exclusively governmental function is unfounded and insufficient to survive a  
 6 motion to dismiss.

7 To the extent Ms. Jaman argues the pool is operated for the benefit of the public<sup>9</sup>,  
 8 *Brentwood Academy* has held that alone does not render its action a traditional and exclusive  
 9 public function. *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 309  
 10 (2001).

11 **2. Defendants Did Not Act Under Color of State Law Under the Joint Actor**  
**Test.**

12 As mentioned above, the Joint Actor Test can be satisfied when the government either:  
 13 “(1) ‘affirms, authorizes, encourages, or facilitates unconstitutional conduct through its  
 14 involvement with a private party,’ or (2) ‘otherwise has so far insinuated itself into a position of  
 15 interdependence with the non-governmental party,’ that it is ‘recognized as a joint participant in  
 16 the challenged activity.’” *Wright*, 48 F.4th at 1123. Plaintiff must show more than a “merely  
 17 contractual relationship between the government and the non-government party.” *Belgau* 975  
 18 F.3d 940 at 948 (Emphasis added).

19 **A. No government or its agent has affirmed, authorized, encouraged, or**  
**facilitated Plaintiff's alleged unconstitutional conduct.**

20 The City of Port Townsend has not affirmed, authorized, encouraged, or facilitated the  
 21 removal of Ms. Jaman for a pattern of code of conduct violations. Ms. Jaman has not alleged any  
 22 such conduct.

23

---

24

25 <sup>9</sup> Defendants do not concede that this YMCA benefits the public more than any other YMCA.

1 Even if Ms. Jaman had alleged governmental conduct, it is not possible based on Ms.  
 2 Jaman's recollection of the events. Based on the nature of the allegations, Rowen DeLuna heard  
 3 yelling and use of vulgar language in front of young children in the locker room and once inside,  
 4 she learned of Ms. Jaman's actions. Dkt. 1, Complaint, paras. 46, 47. "Within seconds" Ms.  
 5 DeLuna told Jaman she was banned "for life" and told her to leave. *Id.* at 47.

6 In the "seconds" it took for Ms. DeLuna to ban Ms. Jaman, it is not possible she received  
 7 governmental affirmation, authorization, encouragement, or facilitation of Ms. Jaman's ban.

8 Plaintiff's bare assertion that YMCA "participated in joint action regarding the response  
 9 to the incident that occurred on July 26, 2022" is baseless and without evidence. Dkt. 1,  
 10 Complaint, para 17. It is virtually identical to the dismissal of the "formulaic recitation of the  
 11 elements" of Twombly's pleadings. Here identically to Iqbal, "Rule 8 does not empower  
 12 respondent to plead the bare elements of [her] cause of action [...] and expect [her] complaint to  
 13 survive a motion to dismiss." *Iqbal* at 687.

14

15 **B. The City Has Not Asserted Itself Into a Position of "Interdependence"  
 16 With the YMCA To Be In Joint Participation in the Challenged  
 17 Activity.**

18 To establish its alleged "conspiracy" between the YMCA and the City, Ms. Jaman states a  
 19 symbiotic relationship between YMCA and the "City."

20 Again, Ms. Jaman has not alleged any communication between Mr. Mauro and the above-  
 21 named moving Defendants before Plaintiff's removal and banning from the YMCA.

22 Not only is there no indication of communication or cooperation between a City official  
 23 and the YMCA, but "interdependence" must be *in the challenged activity*. Meaning any City  
 24 official would have to play a role in any violation of Jaman's Constitutional rights, not just a  
 25 common interest in running the pool. Ms. Jaman has not claimed the City was involved in the  
*challenged activity*. She does not claim any "collusion" existed before her banning.

1 Reasonable minds can only conclude a lack of interdependence or joint participation. Per  
 2 the Management Agreement, the YMCA has full discretion to operate the Pool in accordance  
 3 with its own rules and regulations. Ex. 3, Dkt. 1-2, Management Agreement, p. 623-25.

4 **C. Defendants have merely a contractual relationship with the City of  
 5 Port Townsend.**

6 Ms. Jaman shows merely a contractual relationship between the government and the  
 7 YMCA. *Belgau* is clear “a merely contractual relationship between the government and non-  
 8 governmental party does not support joint action.” *Belgau* 975 F.3d at 948.

9 The Management Agreement is the only connection between the YMCA and the City  
 10 which is a purely contractual relationship.

11 The YMCA entered into a leasing agreement with the City to fully manage and operate  
 12 the pool. Dkt. 1-2, Ex. 3, Management Agreement, p. 623-24. This agreement gives the YMCA  
 13 full discretion to “control in all matters relating to the management and operation of the Pool,  
 14 including, without limitation, staffing decisions, employment policies, [etc.].” *Id.* at 623. The  
 15 YMCA had full control over the operation of the pool and instituted its own rules/code of  
 16 conduct. Dkt. 1-3, Ex. 9, Code of Conduct, p. 24.

17 Ms. Jaman has not made any factually possible allegations of a “substantial degree of  
 18 cooperative action” where the state “provide[s] significant assistance to the underlying acts” that  
 19 make up the Constitutional violation.

20 **VI. CONCLUSION**

21 Plaintiff has failed to state a claim upon which relief can be granted against the YMCA  
 22 Defendants. Based on the pleadings, the documentation shows simply a contractual relationship  
 23 between the YMCA and the City, which is legally insufficient to establish liability against a  
 24 private actor under 42 U.S.C. § 1983. Ms. Jaman has not alleged facts that could result in a  
 25 prevailing legal action, and her conclusory statements of state action do not create a claim.

*Iqbal* dismissed recitals of cause of action elements based on mere conclusory statements. At no point does Ms. Jaman provide a single, plausible, factual allegation that supports a cause of action against the YMCA. She cites no supporting facts from the 816 pages of exhibits attached to her Complaint. Regardless, none of them support Plaintiff's bare allegations; instead, the Complaint exhibits contradict them. As such, Plaintiff is without factual support creating a viable 42 U.S.C. § 1983 claim against the moving Defendants, who respectfully request that the Court grant their motion to dismiss.

DATED this 12th day of November, 2024.

## McGAUGHEY BRIDGES DUNLAP, PLLC

/s/Shellie McGaughey  
Shellie McGaughey, WSBA #16809  
Michael Kyllo, WSBA #51412  
Attorneys for Defendants Olympic Peninsula  
YMCA, Wendy Bart, Rowen DeLuna and Erin  
Hawkins

# LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Kaylin Leigh Carlson  
Christopher E. Hawk, WSBA #43307  
Jason Harrington, WSBA #45120  
Kaylin Leigh Carlson, WSBA #52606  
1111 Third Ave Suite 2700  
Seattle, WA 98101  
Ph: 206-876-2968

Attorneys for Defendants Olympic Peninsula YMCA, Wendy Bart, Rowen DeLuna and Erin Hawkins

**CERTIFICATE OF SERVICE**

The certify that on the below date I electronically filed the follow document:

**DEFENDANTS OLYMPIC PENINSULA YMCA, WENDY BART, ROWEN DELUNA, AND ERIN HAWKINS'S MOTION TO DISMISS**

with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Rosemary Schurman, WSBA #11451  
rbschurman@aol.com  
rbschurman@msn.com

Harmeet K. Dhillon, *pro hac vice*  
[Harmeet@libertycenter.org](mailto:Harmeet@libertycenter.org)

Josh Dixon, *pro hac vice*  
[jdixon@libertycenter.org](mailto:jdixon@libertycenter.org)

Eric Sell *pro hac vice*  
esell@libertycenter.org

Amanda Bley Kuehn, WSBA #42450  
[akuehn@lldkb.com](mailto:akuehn@lldkb.com)

Elizabeth McIntyre, WSBA #25671  
[emcintyre@lldkb.com](mailto:emcintyre@lldkb.com)

Christopher E. Hawk, WSBA #43307  
[Chris.Hawk@lewisbrisbois.com](mailto:Chris.Hawk@lewisbrisbois.com)

Jason Harrington, WSBA #45120  
[jason.harrington@lewisbrisbois.com](mailto:jason.harrington@lewisbrisbois.com)

Kaytlin Leigh Carlson, WSBA #52606  
[Kaytlin.carson@lewisbrisbois.com](mailto:Kaytlin.carson@lewisbrisbois.com)

DATED this 12th day of November, 2024.

/s/Emily Rayborn  
Emily Rayborn, Paralegal